IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Sanjay Sharma & ors. Vs. State of Rajasthan

S.B.CRIMINAL APPEAL NO.172/1988
against the judgment dt.27.4.88 passed by
the Addl.Sessions Judge No.1, Jodhpur,
in Sessions Case No.22/1987.

Date of Judgment: August 10, 2007

P R E S E N T

HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.Mridul Jain, for the appellant.
Mr.O.P.Rathi, Public Prosecutor.

BY THE COURT:

1. This is an appeal against the judgment of learned Additional Sessions Judge No.1, Jodhpur, whereby he convicted & sentenced the accused appellants Sanjay, Smt.Tulsi & Prakash as under:

ACCUSED SANJAY:

U/sec.376 IPC :Sentenced to 5 years' R.I.together with a fine of Rs.500/- & in default, to further undergo two months' S.I.

U/Sec.366 IPC	: Sentenced to three years' R.I. together with a fine of Rs.100/- & in default, to further undergo 15 days' S.I.
U/Sec.368 IPC	: Sentenced to four years' imprisonment.
U/Sec.344 IPC	: Sentenced to one year's R.I.

ACCUSED SMT.TULSI:

U/sec. 376/109 IPC	:Sentenced to 5 years' R.I.together with a fine of Rs.500/- & in default, to further undergo two months' S.I.
U/Sec.368 IPC	:Sentenced to four years' imprisonment.
U/Sec.344 IPC	:Sentenced to one year's R.I.

ACCUSED PRAKASH:

U/sec.376 IPC	:Sentenced to 5 years' R.I.together with a fine of Rs.500/- & in default, to further undergo two months' S.I.

2. The charges against the accused appellants were that on 16.12.1986 at 5.30 AM, accused appellant Sanjay abducted Kumari Vinod from her house at Jagdamba Colony, Pratap Nagar, Jodhpur and kept her in his house at Masooriya, Jodhpur for the purpose of prostitution and committed rape on her during this intervening period from 16.12.86 to 1.1.87. Accused Sanjay was charged for the offences u/ss.366, 344, 376 & 368 IPC. His

wife accused Smt.Tulsi was charged u/ss.368, 376 read with 109 IPC and 344 IPC, whereas accused Prakash was charged under Section 366 IPC. All the three accused appellants pleaded not guilty. The prosecution examined as many as ten witnesses. The statements of the accused appellants were recorded under Section 313 CrPC. They produced Dinesh Kumar (DW 1) and Teekam Chand (DW 2) in their defence. After hearing the arguments, the learned trial Judge convicted & sentenced the accused appellants as above.

3. While assailing the judgment of the learned trial Judge, it has been contended by learned counsel for the appellants that a false case of abduction and rape has been registered against the accused appellants because of the fact that Kumari Vinod, said to be the prosecutrix of the case, voluntarily went at the residence of appellant Sanjay and resided there for a period of fifteen days and when she was not willing to leave the house of the accused appellants, her mother took her forcibly through the police by registering this F.I.R. This fact is established from the evidence of the defence witnesses, who have not been cross examined on this point. Further, no semen was detected during the alleged period of rape of fifteen days, especially when the prosecutrix was undergoing the menstrual cycle for four days from 19th to 22nd December, 1986 and thereafter, as per her own statement,

she was not raped within five to six days preceding the date of the F.I.R. i.e. 1.1.1987. According to the learned counsel, the solitary statement of the prosecutrix Kumari Vinod suffers from infirmities and doubts, upon which no reliance can be placed, whereas the learned Public Prosecutor has supported the conviction & sentences passed by the learned trial Judge.

4. I have gone through the statements of the prosecution witnesses examined during the trial as well as the judgment of the learned trial Judge. In this case, it is an admitted fact that from the morning of 16.12.1986 till 1.1.1987, Kumari Vinod was kept at the residence of appellant Sanjay but whether she went there voluntarily or she was subjected to abduction, has to be examined in the light of over all evidence brought on record.

5. It is true that the prosecutrix has supported her version as stated by her mother in the F.I.R. (Ex.P.1) but if her evidence is scrutinized in the light of other evidence, it appears that vide Ex.P.9, her last menstrual period shown is from 19.12.1986 and this four days' period came to an end on 22.12.1986, therefore, in the normal way, it cannot be said that she was subjected to rape during that period. As per the report of the Department of Radiology and Medical Board, the age of the prosecutrix was above eighteen years on 24.1.1987 i.e. she was major and as

per her own statement, she has stated in the cross examination that she was not subjected to rape for five to six days prior to lodging of the F.I.R. on 1.1.1987. In this way, during this intervening period of about fifteen days, she was not subjected to rape for about ten days as per her own version. For rest of the period, whether she was raped or not, at the house of appellant or at Ghas Mandi, where she was taken many a times, by other persons, there is no corroborative evidence except the statement of the prosecutrix, who has stated that she cannot say as to who were those persons, who committed rape on her at Ghas Mandi. That apart, the clothes which were shown to him vide Ex.P.1 to Ex.P.5, have not been identified by herself and as per the report of the State Forensic Science Laboratory, no semen was detected on vaginal swab and smear.

6. Apart from this evidence, the most important aspect of this case is that if the Court relies upon the solitary statement of the prosecutrix Kumari Vinod, it is very unsafe to base the conviction on her testimony, especially when she remained at the house of appellant Sanjay for fifteen days and was doing her house work as per her own version in the cross examination and as per the statement of Dinesh Kumar (DW 1), her mother Smt.Kamla (PW 3) went to father of accused appellant Sanjay and requested him to ask Tulsi not to keep her daughter Kumari Vinod on account of

making her engagement for marriage. This statement of Dinesh Kumar (DW 1) stands totally uncontradicted on this count, as despite opportunity being given, no cross examination was made to this witness, therefore, he cannot be a witness of afterthought. When this very question about meeting of Dinesh Kumar (DW 1) with the mother of prosecutrix viz; Smt.Kamla to lodge the F.I.R. was put to Kamla and to the prosecutrix herself, though they have denied about this meeting with Dinesh Kumar (DW 1) but when the statement of Dinesh Kumar (DW 1) is not confronted, his statement given in the examination-in-chief has to be looked into as a proof of relevant fact. The statement of Dinesh Kumar is further fortified from the neighbour viz; Teekam Chand (DW 2), who has also stated that accused Sanjay and Prakash were his neighbour with their family members and one girl Kumari Vinod, prosecutrix as per photo Ex.D.2 used to visit there off and on. She was frequently coming inside and outside the house and on 6th January, 1987, he found that Kumari Vinod was taken by the police. If these statements of defence witnesses are looked into in the light of statement of prosecutrix and over all circumstances of the case, it appears that she was neither subjected to abduction nor to rape against her will. If at all, she left her mother's house and stayed at the residence of accused Sanjay, it was with her own consent and, as such, the findings of learned trial Judge with regard to abduction and rape

cannot be sustained in the eye of law, especially when there is no evidence of corroboration of semen.

7. Consequently, this appeal is allowed. The conviction and sentences of appellants Sanjay, Smt.Tulsi and Prakash for the offences u/ss.376, 376/109, 366, 368 & 344 IPC awarded by the Additional Sessions Judge No.1, Jodhpur vide his judgment dt.27.4.1988 are set aside and they are acquitted of the charges levelled against them. Since the appellants are on bail, their bail bonds stand cancelled.

(DEO NARAYAN THANVI), J.

RANKAWAT JK, PS